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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,988	11/20/2003	Larry C. Mattheakis	CYTOP135X1	1753
22434	7590	11/02/2006	EXAMINER	
BEYER WEAVER & THOMAS, LLP			SRIVASTAVA, KAILASH C	
P.O. BOX 70250			ART UNIT	PAPER NUMBER
OAKLAND, CA 94612-0250			1657	

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,988	MATTHEAKIS ET AL.	
	Examiner	Art Unit	
	Dr. Kailash C. Srivastava	1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 August 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) 12-19 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-11 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>04.01.2004 & 04.18.2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. Applicants' responsive communication filed 02 August 2006 in response to Office Action mailed 03 July 2006 is acknowledged and entered.
2. The Art Unit Location for your application under prosecution at the United States Patent and Trademark Office (i.e., USPTO) has been changed to Art Unit 1657. To aid in correlating any papers for this application (i.e., 10/719,988), all further correspondence regarding this application should be directed to Examiner Kailash C. Srivastava in Art Unit 1657.

Claim Status

3. Claims 1-19 are pending

Restriction/Election

4. Applicants' election with traverse of Group I, Claims 1-and 10-11 filed 02 August 2006 to election requirement in Office Action mailed 03 July 2006 is acknowledged and entered. Applicants' traversal is on the grounds that examining claims 8-9 grouped as invention of Group II together with Claims 1-7 and 10-11 grouped as Group I invention in this application will not cause a serious burden to the Examiner.

In accordance with applicants' traversal and the literature search for prior art, claims 8-9, directed to a different inventive group, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Method claims 8-9 are hereby rejoined with former Group I invention-encompassing method Claims 1-7 and 10-11and fully examined for patentability under 37 CFR §1.104. In accordance with the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), method Claims 12-19, that do not depend from or otherwise include all the limitations of Claims 1-11, have NOT been rejoined. As a result of rejoinder *supra*, former groups I-II are regrouped as invention of group I encompassing Claims 1-11. Since applicants have not traversed the restriction requirement with respect to Groups III-IV invention in the restriction requirement in Office Action mailed 03 July 2006, the restriction requirement for those groups encompassing claims 12-15 and 16-19 respectively is still deemed proper, is adhered to and is made FINAL.

Accordingly, Claims 12-19 are withdrawn from further consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP §821.03.

5. Claims 1-11 are examined on merits.

Priority

6. Applicants' claim for domestic priority under 35 U.S.C. §120 to co-pending U.S. Non-Provisional Application 10/623, 486 filed 18 July 2003 is acknowledged.

Objection To Claims – Minor Informalities

7. Claim 3 is objected to because of the following informalities:

- at Line one of the cited Claim, before the word "wherein" a --, -- should be inserted.

Appropriate correction is required.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Long*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of co-pending U.S. Non-Provisional Application No. 10/623, 486. Although the conflicting claims are not identical, they are not

patentably distinct from each other because the steps of the co-pending claim 1 comprises essentially the same language as the instantly claimed Claims 1 (a) + (b) and 2 and further instantly claimed Claims 3-11 have exactly the same language as the claimed method in claims 2-11 of said co-pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

10. For aforementioned reasons, no Claims are allowed.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Jon Weber can be reached at (571)-272-0925 Monday through Thursday 7:30 A.M. to 6:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kailash C. Srivastava, Ph.D.

Patent Examiner

Art Unit 1655

(571) 272-0923

October 30, 2006



JON WEBER
SUPERVISORY PATENT EXAMINER